



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 5, 1998

Mr. Jon P. King  
Attorney at Law  
418 Denrock  
Dalhart, Texas 79022

OR98-1406

Dear Mr. King:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115876.

The City of Stratford (the "city") received a request for fifteen categories of information relating to traffic citations and radar units. You contend that three of these categories of information are excepted from disclosure under sections 552.102, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

The documents at issue are traffic citations and two police officers' personnel files. You contend that all of these documents are excepted from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You argue that the city is generally involved in litigation relating to every traffic citation that it issues. However, you have not met the section 552.103(a) burden with regard to any specific traffic citation. Nor have you established that the personnel files relate to anticipated or pending litigation. Thus, we find that the city may not withhold any of the submitted documents from disclosure under section 552.103(a).

Next, you argue that the traffic citations and personnel files are excepted from disclosure pursuant to section 552.108. Section 552.108 provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You contend that releasing the traffic citations will interfere with law enforcement because it will enable the public to determine where traffic citations are most frequently issued and to avoid those locations. We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The location at which a traffic citation is issued constitutes basic information under section 552.108(c). Therefore, the location, along with all other basic information, must be released from every traffic citation.

You note that several of the traffic citations did not result in conviction or deferred adjudication. We agree that these citations, with the exception of basic information, may be

withheld from disclosure under section 552.108(a)(2). The remaining citations must be released in their entirety. You have not demonstrated how releasing the personnel files would interfere with law enforcement. Therefore, we conclude that the personnel files are not excepted from disclosure under section 552.108.

Finally, you contend that the personnel files are excepted from disclosure under section 552.102. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Having reviewed the personnel information submitted to this office, we find that none of it is protected by the common-law right to privacy. *See* Open Records Decision Nos. 473 (1987) (public has legitimate interest in job performance of public employees), 470 (1987) (public employee's job performance does not generally constitute his private affairs). Therefore, the city may not withhold the personnel files from disclosure under section 552.102.

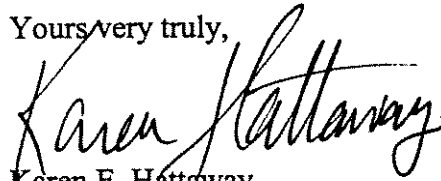
We note, however, that the personnel files do contain information that is protected from disclosure. Section 552.117(2) requires you to withhold peace officers' home addresses, home telephone numbers, social security numbers, and information that reveals whether the officers have family members. Additionally, we have marked two medical records. Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* V.T.C.S. art. 4495b, §§ 5.08(c), (j). With the exception of the information protected by section 552.117 and the MPA, the personnel files must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Karen Hattaway", written over the typed name.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/mjc

Ref: ID# 115876

Enclosures: Marked documents

cc: Mr. Albert F. George, Jr.  
1102 Sherman, Apt. 26  
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(w/o enclosures)